

EXHIBIT H



Civil procedure rule creates confusion

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Continued pricing pressure from clients means firms are limited to modest yearly rate increases.

BY KAREN SLOAN

Billing rates continued to climb in 2010—but by only a fraction of the rate they grew during the boom years of the mid-2000s.

The average firmwide billing rate—a combination of associate and partner rates—increased by 2.7% in 2010, according to *The National Law Journal's* annual survey of hourly billing rates. It's the second straight year of growth rates less than 3%, which is a

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- Billing rates rose on average

- The average hourly rate for firms was

5 \$305

Homeowners are test-driving claims such as civil RICO in their challenges.

BY SHERI QUALTERS

"Robo-signing" has become practically a household word since news broke in September that mortgage lenders signed and approved foreclosure documents on a massive scale without verifying that they rightfully held the mortgage.

Now, foreclosures fights over robo-signing and other paperwork problems are snowballing, according to lawyers monitoring such cases. And the claims that homeowners are using in their cases are expanding, too. Older arguments involving negligence and fraud are still com-

mon, but homeowners are now employing specific state consumer protection laws and federal debt collection and anti-rackereering statutes to fight lenders.

"If the government doesn't step in, this [type of litigation] is going to make personal injury, or maybe even asbestos litigation, seem like a drop in a bucket," said Glenn Russell Jr., a Fall River, Mass., solo practitioner. Russell has been representing borrowers for about five years and has about 55 active cases with clients who are challenging their lenders' standing to foreclose, and one of his cases has become a flashpoint in the debate about

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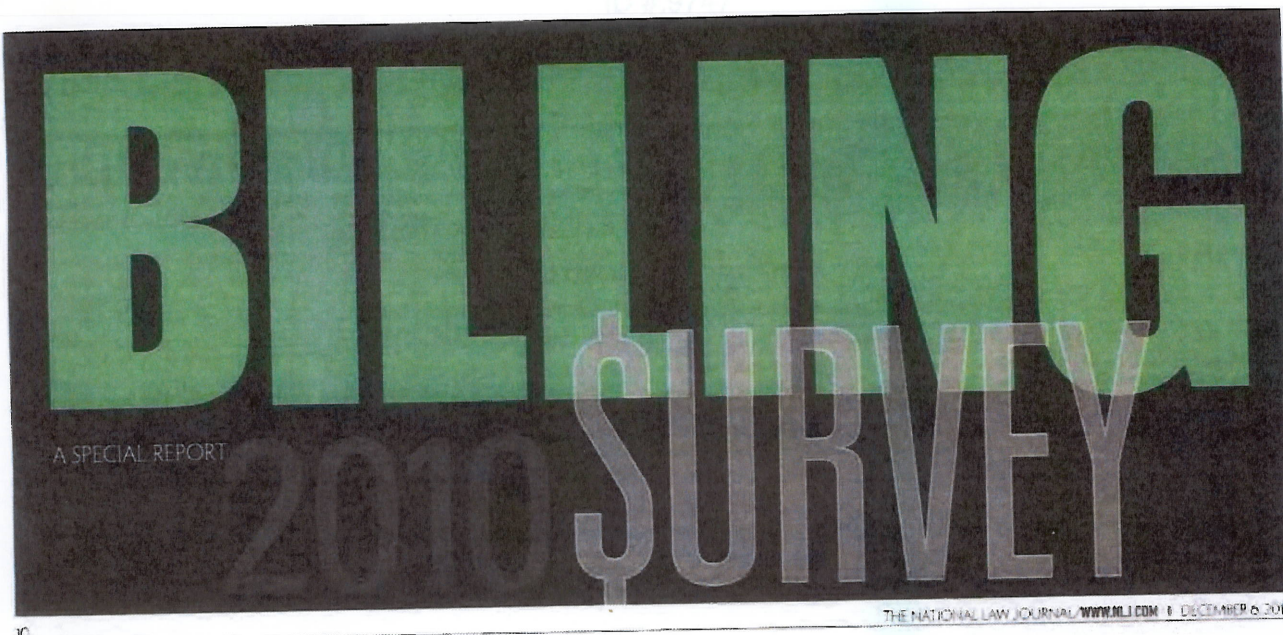
KATY O'LEARY, ASSOCIATE, NUTTER McLENNEN & FISH LLP, BOSTON

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The new normal: billing rate increases of 5% or less

BILLING, FROM PAGE 1

far cry from the standard 6% to 8% increases from 2004 until 2008 and just slightly higher than the rate of inflation.

"Firms are still very cautious and thoughtful about trying to push through rate increases," said Altman Weil consultant Tom Clay, whose own research has confirmed similarly modest billing-rate growth. "Our best guess is that the next three years are going to be about the same. I give it a 50% chance that this is the new reality. That could change if there is a major economic boom, but it's very hard to picture clients agreeing to those kinds of rate increases again."

Several law firm leaders and consultants said they expect pricing pressure from clients to remain high for the foreseeable future, thus limiting the ability of firms to fall back on across-the-board rate increases upwards of 5%. Sizeable hourly rate increases were a key factor in soaring law firm revenue through much of the past decade. Recent research from Wells Fargo Wealth Management and Citi Private Bank indicates that law firm revenue has been flat thus far for 2010. A recent survey of executives from the 200 most profitable U.S. firms by NLJ affiliate *The American Lawyer* found that 90% of firms expect to increase hourly rates by 5% or less in 2011.

"I think the days of firms being greedy are over," said McCarter & English Chairman Michael Kelly. "The clients are more sophisticated and the competition is fiercer than ever."

The current slide in rate growth started in 2008, when the average firmwide increase was 4.3%, compared to 7.7% in 2007. Growth has slowed even further in the past two years, and the average firmwide billing rate is now \$385, up just \$10 from 2009.

"I can't conceive of rates going higher than 4 or 5% in the foreseeable future."

PARTNER BILLING RATE

HIGHEST
\$1,120

LOCKE LORD DISSELL & LUDDELL

LOWEST
\$145

MARSHALL, DENHEHY, WARDER,
COLEMAN & GOGGIN

AVERAGE
\$470

said Jackson Lewis managing partner Patrick Vaccaro. The firm reported an average firmwide billing rate of \$364, up \$3 from 2009. "Our clients are requesting that we freeze rates or give them a multi-year rate."

Nationwide, among the firms responding to the survey this year and last, the average firmwide billing rate for partners was \$470, up 3% from \$456 in 2009. For associates, the average rate was \$294, up about 2.5% from \$287 in 2009. Although growth was comparatively low, most of these firms—75%—did raise rates in 2010. Rates remained the same at 8% of these firms, while 17% lowered their firmwide average billing rate.

ASSOCIATE BILLING RATE

HIGHEST
\$690

SCHULTE ROTH & ZABAL

LOWEST
\$110

CHADBOURNE & PARKE

AVERAGE
\$294

As in recent years, the survey results showed that alternative fee arrangements account for a growing percentage of revenue at many firms, and variations on the billable hour such as discounts and blended fees remain common.

Among the firms lowering billing rates was McCarter & English, which reported a 10% decrease in its average firmwide billing rate in 2010 to \$355. The Newark, N.J.-based firm has reduced rates for the past two years, Kelly said. Although the firm might not generate as much revenue in the short term, Kelly expects that it will benefit with greater client loyalty and trust in the long term.

"When the economy is bad and clients

are laying off people, the last thing you want to say is, 'We're going to raise our rates,'" he said. "I was adamant that we weren't going to do that. I decided we were going to share the pain."

The law firm billing information was collected as part of the NLJ 250, *The National Law Journal's* annual survey of the nation's 250 largest law firms. The survey period ran from Oct. 1, 2009, to Sept. 30, 2010, with 187 firms reporting at least some billing information. Firms were asked to report their billing rates as well as their use of variations on the billable hour and alternative billing arrangements. Although firms that reported rates in 2009 did not necessarily do so in 2010, the figures suggest billing trends, particularly among midsize firms, which made up the majority of firms that provided detailed billing information for both years.

Simply raising a firm's billable rate is no guarantee of increased revenue. Law firm collection rates have remained flat, said Mark Medice, the program director for Hildebrandt Baker Robbins' Peer Monitor Index, which tracks several law firm economic indicators. "Not only have rates been pretty slow to grow, but at a collected level, they haven't gone up at all," Medice said.

'WE'RE SEEING MORE DISCOUNTS'

Additionally, the slow economy has led clients to rely more on hourly-rate discounts.

"I think we're seeing more discounts," said consultant Rees Morrison, who specializes in advising law departments. Five percent is a given, and 10% is what you shoot for if you're spending hundreds of thousands of dollars and up with a particular firm."

Instead of raising rates firmwide by class level—as many have done in years

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